

July 22, 1998

The Honorable Shirley Ann Jackson
Chairman
Nuclear Regulatory Commission
Washington, DC 20555

HAND DELIVERED

Dear Dr. Jackson:

We have received your July 14, 1998, letter responding in part to the Defense Nuclear Facilities Safety Board's (Board) April 9, 1998, request to the Nuclear Regulatory Commission (NRC) for data, reports, and information on possible external regulation of the United States Department of Energy's (DOE) defense nuclear facilities. Your letter states that "[i]n order to accurately respond to Questions 1 and 2, DNFSB should provide an updated list of which DOE facilities the DNFSB considers defense facilities, along with a description of each facility's activities." Your letter goes on to explain that once in receipt of this information, NRC will be able to provide the information requested in Questions 1 and 2 of the Board's April 9, 1998, letter.

As indicated below, most, if not all, of this information is available to the public or has previously been discussed with NRC staff.

Defense nuclear facilities are statutorily defined in the Atomic Energy Act, as amended, at 42 U.S.C. § 2286g

. . . [T]he term 'Department of Energy defense nuclear facility' means any of the following:

(1) A production facility or utilization facility (as defined in section 11 of this Act) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but the term does not include--

(A) any facility or activity covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program;

(B) any facility or activity involved with the transportation of nuclear explosives or nuclear material;

(C) any facility that does not conduct atomic energy defense activities; or

(D) any facility owned by the United States Enrichment Corporation.

(2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of Energy, but the term does not include a facility developed pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) and licensed by the Nuclear Regulatory Commission.

In 1991, Congress enacted the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190, Dec. 5, 1991) which amended the Board's enabling statute to include oversight of facilities that conduct assembly, disassembly, and testing of nuclear weapons. Thus, there are currently three basic categories of defense nuclear facilities: (1) DOE facilities which produce or produced special nuclear materials for national security purposes, which now also include facilities that assemble and disassemble nuclear weapons; (2) DOE facilities which utilize or utilized special nuclear materials for national security purposes, such as defense-related reactors, and now include weapons testing facilities; and (3) DOE nuclear waste storage facilities not licensed by the Nuclear Regulatory Commission. By statute, the Board has oversight jurisdiction for these facilities throughout their entire life cycle, from design, construction, and operation through decommissioning regardless of whether these facilities are under the control of the Assistant Secretary for Defense Programs. The Board, in its Seventh Annual Report to Congress listed priority defense nuclear facilities and activities. A copy of the relevant portion of that report is enclosed.

Because defense nuclear facilities have been defined by statute to include items as small as "any equipment or device" or "component part designed for such equipment or device," the Department of Energy and the Board have, for the most part, aggregated such equipment or devices at the building level, and have referred to the building or room as the "defense nuclear facility." DOE's December 1996 *Report of the Department of Energy Work Group on External Regulation* cited in your Memorandum of Understanding with Secretary Peña contains a list in Appendix J of DOE nuclear facilities managed by the Office of Defense Programs. In addition it includes those facilities managed by the Office of Environmental Management, and the Office of Energy Research.

In a presentation to NRC staff on January 21, 1997, Board Member Joseph DiNunno used, and left with your staff, view graphs that designated facilities as category I, IIA, IIB, III, IV, and V. A copy of Appendix J, annotated to show this categorization, is enclosed. Facilities marked I include operational defense nuclear facilities in the weapons program required to support the weapons mission. Those marked IIA are high hazard defense nuclear facilities required for safe materials stabilization of radioactive residuals of weapons production, waste processing, and safe storage. Defense nuclear facilities marked IIB, III, and IV are former operational facilities that are the major targets for deactivation, decommissioning, cleanup, and environmental restoration. Facilities marked V are non-defense nuclear facilities which do not fall

under the Board's oversight jurisdiction. For purposes of responding to the Board's Questions 1 and 2 of April 9, 1998, those defense nuclear facilities designated as I or IIA are of principal interest.

With this additional information from publicly-available documents, the Board hopes NRC will be able to promptly respond to initial Questions 1 and 2 contained in the Board's letter of April 9, 1998. If you or your staff have additional questions in responding to our initial request for information, please do not hesitate to contact me by phone at 202-208-6400.

Sincerely,

John T. Conway
Chairman

Enclosures

c: The Honorable Nils J. Diaz, Commissioner
The Honorable Edward McGaffigan, Jr., Commissioner